

School wins drug-test appeal

Expanded Hunterdon Central program called no denial of rights

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A state appeals court yesterday upheld Hunterdon Central Regional High School's extension of random drug testing to all students involved in extracurricular activities or who have parking permits.

The impact of the decision will be minimal for now; the Raritan Township school does not plan to reinstitute its drug-testing program for the start of the school year, and the split decision by the appellate court guarantees the plaintiffs the right of appeal to the

state Supreme Court, which they are pursuing. Though state courts traditionally have found in the New Jersey Constitution greater protections against unreasonable searches than those provided under the U.S. Constitution, that was not the case in yesterday's 2-1 ruling.

Writing for the majority, Judge Edwin Stern recognized those protections.

"However, we are not dealing with a criminal matter or a traditional search and seizure issue resulting in suppression of evidence obtained for use in a criminal trial," he wrote.

He said there was no epidemic of drug use at the time the relevant sections of the state and federal constitutions were written. Stern said state courts have, in fact, followed the U.S. Supreme Court on issues of drug testing.

"Thus, in the absence of any support in the history, language or intent of our Constitutional drafters," Stern wrote, "we find no basis for concluding that the State Constitution warrants a different approach than that taken by the United States Supreme Court with respect to the question of drug testing in the public schools

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Hunterdon Central wins on appeal

under the Fourth Amendment.”

The decision comes on the heels of a June 27 U.S. Supreme Court ruling that upheld the right of schools to broadly administer random drug tests to students, saying the testing serves an important purpose for the schools without trampling students' rights to protection from unreasonable searches and seizures.

Ravinder Bhalla, the lawyer for the three Hunterdon Central students who brought the challenge along with the New Jersey chapter of the American Civil Liberties Union, said the decision will be appealed.

“I think it's flawed for several reasons,” Bhalla said. “The Appellate Division piggybacked onto the federal Supreme Court decision . . . without providing reasoning that's consistent with the ‘special needs’ test New Jersey Supreme Court requires when reviewing the constitutionality of a random drug testing program.”

Judge Naomi Eichen, in her dissenting opinion, said New Jersey has long required some evidence of “individualized suspicion” before allowing a search.

“I believe that the principle of ‘individualized suspicion’ has been transmuted into the ‘special needs’ requirement adopted by our Supreme Court . . . and that that requirement must be met to justify the governmental purpose of initiating random drug testing programs in this state,” Eichen wrote.

J.C. Salyer of the ACLU said he was disappointed, but will definitely pursue an appeal.

“I'm more optimistic the New Jersey Supreme Court will be more vigilant in protecting students' privacy rights,” he said. “The court has a long history of interpreting

the state constitution's protections more broadly than the federal constitution.”

Kevin Kovacs, the lawyer who represented the school on the appeal, said he was happy the district prevailed.

“It's going to provide a tool for school boards — not just Hunterdon Central, but all school boards — to use random drug testing to deter drug use,” he said.

The case originally was brought by three Hunterdon Central students and their parents who opposed extending the random drug testing program, which was already in place for student athletes at the 2,500-student school, to include any students involved in extracurricular activities or who held a parking permit. In January 2001, a Superior Court judge issued a restraining order preventing the school board from implementing the broader testing program.

Michael Joye, the father of one of those students, Shaun Joye, said he was disappointed that the court upheld the right of schools to test students who are not under suspicion for drug use.

“As a parent, I felt it was my decision whether my law-abiding son should be drug-tested or not, but the courts have ruled different,” Joye said.

Principal Lisa Brady said school officials were “very happy about the decision,” which allows a program she described as just one part of an overall approach to keeping children clean and sober. She said the testing program would not be implemented by the start of the upcoming school year.

“That's not going to happen,” she said. “We could never put it together that quickly, nor would we want to. We need to go back to square one in terms of implementing the program. It's a big undertaking to reimplement a policy of this magnitude. We were so careful the last time we did it and we want to do that this time. We have a lot of legwork to do at this point.”